

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS  
SUBCOMMITTEE ON SB 134**

**Call to Order:** By **SEN. JOHN ESP**, on January 23, 2003 at 5:00  
P.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Esp, Chairman (R)  
Sen. Edward Butcher (R)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee, Vice-Chairman (R)  
Sen. Linda Nelson (D)  
Sen. Jerry O'Neil (R)  
Sen. Joseph (Joe) Tropila (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Lynn Zanto, Legislative Branch

**Please Note:**

**Audio-only Committees:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 134, 1/10/2003

**{Tape: 1; Side: A}**

**Chuck Swysgood, Office of Budget and Program Planning**, said he did not approve the budget that was submitted by the judiciary, as the difference was approximately \$17 million. They approved \$49 million in their budget and the request from the Judiciary was \$66 million. SB 176 from last session allowed up to \$25 million for district court assumption and that was based on actual expenses for 2001. The actual expenditures for 2001 were

approximately \$18.1 million. When they put the budget together the bill also contained an escalator of 3 percent. They used the \$18.1 million figure and added a 3 percent growth rate and this is what was put in the budget for each year. The expenditures that the judiciary submitted were quite a bit higher and he felt there needed to be some debate on why this was not recognized in SB 176.

{Tape: 1; Side: A, Counter 9.9}

**Gordon Morris, Montana Association of Counties**, said he felt the bill was not needed, as there is an easy solution. The budget office proposal for 2004 is fixed at \$18.2 Million and in 2005 it is \$19 million. In fiscal year 2003, the district court assumption expenditures were estimated at approximately \$18,389,000 and he doesn't understand why the figure for 2004 has been reduced. There is approximately \$8 million of new costs to counties being assumed in SB 134. There will be \$8,037,000 in 2004 and \$9,200,000 in 2005 and this makes up the \$17 million gap for the biennium. He felt the problem could be taken care of in SB 218. He stated the problem was how to fund the budget for district court as it cannot be restricted financially and operational costs must be funded adequately. The projections from the **Supreme Court** administrative office foresee the 2003 numbers to be \$1 million short in personnel. They project a surplus in operations of \$700,000 and a surplus in capital of a few thousand dollars. The budgets for all 22 districts are approximately \$11 million and they fixed the operational budgets at \$10.8 million. If this figure is adjusted upward, the only thing that would need to be dealt with is the variable costs. The reimbursement program is very good, but from a management perspective there is no way to predict costs because of large cases, etc. He said the reimbursement program is good because the money is spread out evenly among the counties and among all taxpayers. He referred to the bill on page 5, line 20, and said this language takes care of the problem. If there are any costs above what is in the variable account, then the responsibility goes back to the counties. He felt that this program needs to continue, as they cannot predict big cases etc. from the state or county perspective. If they dealt with this in 2005, they would have a better perspective on what the costs are and be better able to fund these costs. He felt that the cost would be less with a set amount for variable costs rather than passing this bill. He would like to have a higher amount put in for 2004 that is at least equivalent to the 2003 amount for variable costs. He felt that these issues would be better dealt with in 2005 as they would have more accurate data on costs than they do now.

{Tape: 1; Side: A, Counter 39.8}

**Ron Alles, Chief Admin. Officer, Lewis and Clark County,** said counties have operated with the numbers that have been provided from **Mr. Morris** for the past 20 years.

**Karla Gray, Chief Justice of Montana Supreme Court,** said the court did not take a position on state assumption when it came about 2 years ago. Before state assumption the expenditures of the courts of Montana were being paid. Some were paid at the state level and others at the county level. The Judicial Branch of government must be funded and has always been funded adequately. They felt when they submitted their budget request to the director's office, the projected costs were based on the best information to the judiciary for state assumption. \$17.2 million was not included in the projected cost relating solely to state assumption in the executive budget. It doesn't matter how they fund state assumption, but the judiciary must be funded either from the General Fund or through this bill. This has been a nightmare for their office and staff and another 2 years of the current system will not work. She stated old programs within the judiciary should not be subsidizing state assumption. The intent by the last legislature was not to start robbing from old program funds to fund state assumption. She said, overall, there was never going to be enough money for this fiscal year when the legislation was passed last session, and therefore the fall back responsibility went to the counties. They are operating at a reimbursement of about 65 percent to cover those variable costs for this year only. She said some of these costs, especially indigent defense, cannot be controlled, as they are a constitutional requirement; however, they can be predicted to some extent on historic data. She said the cost on average for indigent defense from the past 5 to 6 years increased an average of 7 percent. She commented on **Mr. Morris's** testimony on fixed and variable costs and the 65 percent reimbursement to the counties. She said if they try and set a statutory percentage of reimbursement to counties, there is a problem when the money runs out. At 65 percent reimbursement, they have to try and find more money to get through the biennium. She said state assumption conceptually is a fine idea, but this process is in flux and to set a dollar amount for variable costs and to set a statutory reimbursement rate would be a mistake. She does not believe in the supplemental appropriation process, as it is a disincentive to good management except in emergency situations. If a reasonable budget is presented and the numbers are accountable, then the legislature will provide an adequate budget. Those departments should be expected to manage within that budget without having a supplemental appropriation. She does not want to be left in that situation in the Judicial Branch as it is risky to the people of Montana. She discussed SB 218, the public defender's bill, and felt this was not a cure for the problem.

She asked the members of the committee not to leave what they created un-funded.

{Tape: 1; Side: B, Counter 28.2}

**SEN. ROBERT STORY** said this issue needs to be dealt with and he hoped they would not take the option to go backwards and move the courts back to the counties. If the system is organized it will be more accountable, but they need to do some refinement as state assumption has only been in operation for 7 months. He felt that before state assumption it was not a complicated system and it should not be a problem to bring about a unified system that can be managed within the staff of the **Supreme Court**. Historically, there was a certain amount of expenses in the judicial system and he doesn't understand why that number cannot be found. He felt there should be a partial solution so that the issue can be revisited in two years with more accurate data.

{Tape: 1; Side: B, Counter 38.2}

**SEN. WALTER MCNUTT** said an interim committee studied state assumption and it was about the fourth time that it had been attempted. Unilaterally, everyone agreed that it needed to be done. The way it was administered before was not equitable and there were 57 different sources of revenue. The best source they had was the **Department of Revenue** and the list of county expenditures for district courts. There is disparity in the system as some courts have law clerks, judges who spend a lot of windshield time, etc., however the expenditures from the counties were less than \$25 million. He didn't know if there were other imbedded costs that were not reported by the counties. He stated this needs to be looked at to try and get a more accurate figure. He said, however, now that they have assumption, they are \$17 million short and they need to find out where that is. He felt that when they did this that they would be about \$2 million off not \$8 million or \$9 million. He felt it would not be a good idea to go back to the old system. If they do go back, one thing that the counties would like eliminated is the judges right to court order.

**Linda Stoll, Missoula County**, said she had an estimated cost of SB 134 for Missoula County of \$334,000. Across the State of Montana there are still courthouses operating, jury trials being held, court hearings, etc. and they are not in a crisis. The biggest issue here is who is going to pay the bills and they would like to make assumption work for everyone.

{Tape: 1; Side: B, Counter 57.8}

**Lynn Zanto, Legislative Services**, did a brief background on SB 134. She said the judicial budget for district court operations prior to state assumption was \$5 Million/year and \$10 to \$11 Million per biennium. The current budget proposal if the variable cost of state assumption was left out, asks for an increase of about \$1 million. Those costs are attributed to the district court judges as they have a statutory required pay level. The \$1 million proposal would include the increase for the judge's salaries. She stated last session the legislature added judges in Ravalli and Cascade Counties. 8 1/2 FTE's were added to the Judicial Branch to manage state assumption and this is in the fixed cost of district court assumption. There are also the variable costs of SB 134, and in the Governor's proposal they have provided \$15 million for the next biennium. The Judicial Branch request is approximately \$17 million above this proposal. The variable cost is hard to control and to project accurately. She stated under current statute, any excess cost would be the responsibility of the state in the next biennium. In the current year biennium, anything that is above the appropriated level the will be picked up by the counties and SB 134 would lift that sunset. HB 124 outlines how much money should be given for state assumption. This was based on county cost as recorded by the **Department of Revenue**. They did surveys in 1999 and 2001 using revenues in the state budgeting system and the revenues that were used for county district court cost. She referred to page A-21 and said the actual cost was \$26 million in 1998 and not all of this was eligible district court costs. She said, for example, Clerk of Court was not a part of state assumption and there were also grants that counties received, etc. that were not a part of these costs. When the department re-did the survey in 2001, they refined their survey and had counties report by function rather than by expenditure. Total county expenses in 2001 were \$28 million and they were better able to take off state assumed costs of \$18.1 million. In HB 124, the \$25 million was based on the total cost of the survey. They had to remove the non-eligible cost, which put it at \$18.1 million, and there was a 3 percent growth factor added to get to \$18.39 million. The handout provides methodology and discusses the Governor's budget vs. the agency's request and also provides different options that could be addressed. Some of the options were grouped into a state and local partnership. In the current year, the 65 percent reimbursement and not lifting that sunset on having counties fund anything beyond what is appropriated, is a cost share arrangement between counties and state. Other options could be done through revenues and fees, but they might not generate as much money as needed. She said the other thing that could be discussed is cost containment mechanisms.

{Tape: 2; Side: A, Counter 24.3}

**SEN. DAN MCGEE** said they have heard several different price ranges and asked if there is a specific price to this bill. **Ms. Zanto** replied the fiscal note is \$17 million, which is the difference between what the Judicial Branch requested vs. what the Governor's office funded in their budget. The Governor's office funded \$15 Million, which is a total of \$32 million for the variable cost plus the operation.

**SEN. JEFF MANGAN** said the variable costs seem to be where the issues are. He asked how district court cost's were reimbursed to counties and if they were reimbursed at 100 percent.

**Mr. Morris** said they started the county reimbursement program in 1985. This program was funded with 7 percent of the revenue collected from the 2 percent motor vehicle licensing fees. When they went to the flat fee, that fee was adjusted to keep it constant for the amount of money coming to the state annually for funding this program. Before 2001 the request for reimbursement was funded at 100 percent. The program was set up to fund everyone at 80 percent, and the money that was left over went to fund everyone fully if there was enough. Any money that was left over after reimbursing at 100 percent went back to the counties.

**SEN. MANGAN**, referred to the annual report of the Judiciary for 2001. He asked who distributed the money.

**Mr. Morris**, said the state reimburses money back to the counties.

**SEN. MANGAN**, asked if the counties were reimbursed 100 percent.

**Mr. Morris** advised yes.

**SEN. MANGAN** asked if there could have been additional costs by the counties that were not requested or that didn't get reimbursed.

**Mr. Morris** said he was not sure, but some counties probably are not submitting all of their costs because they are not paying attention.

**SEN. MANGAN** asked where the money comes from.

**Mr. Morris** said the program was originally with the **Department of Commerce**, but it is now with the **Supreme Court**.

**SEN. MANGAN** advised the indigent defense budget was \$3.6 million. He asked if that is the total or if there were other costs that the court had to pick up.

**Mr. Morris** said that is in the variable costs.

{Tape: 2; Side: A, Counter 46.8}

**Chief Justice Gray** advised what they had prior to state assumption was 56 reporting units without standardized reporting and they were paid at 100 percent. She also felt that not all costs from the counties are being reported and reported correctly.

**SEN. MANGAN** asked if the proposed indigent defense expenses for 2004 are \$8.2 million. In prior years it has only been at about \$3.5 million and he doesn't think the counties are absorbing this much cost.

**Chief Justice Gray** said the numbers that they are dealing with are from the counties. In one instance there was a situation where the counties did not report any of the computer information and technology costs at all for purposes of state assumption. She felt that if they could go back and track all of the costs and put counties on a standardized reporting system, it would make the costs more realistic.

**SEN. MANGAN** asked where the budget office came up with these numbers. He asked how the counties funded their district court operations and if there were any permissive mills or fees that the counties had prior to SB 176.

**Mr. Morris** replied there is a 654 mill levy authority for counties based upon classification and a substantial amount of money can come from that. Additionally, there is the local option vehicle tax. The revenue from that had priority to fund district court. He said they had property tax, local option tax and a normal array of non-tax revenues come into the counties to fund district court.

**SEN. MANGAN** asked, with the passage of SB 176, if counties still levy the local option tax and if so what are they doing with those funds.

**Mr. Morris** contended the bill was amended so that the courts were stricken as a priority and the money is going into general governmental purposes. Approximately 49 counties still utilize the local option tax for general government operations.

**SEN. MANGAN** asked if the types of revenues used to fund district courts were included in SB 176 and HB 124.

**Mr. Morris** said it doesn't do any good to look at the revenues because they are meaningless. What is important is the expenditures and if they are understated.

**SEN. MANGAN** asked if the local option vehicle tax is still being paid.

**Mr. Morris** said yes, at the local level. The accounting for district court and the entitlement for the adjustment was approximately \$11.4 million. The district court budget for 2003 is \$10.8 million. He saw no big discrepancy on the expenditure side of the ledger.

{Tape: 2; Side: B, Counter 12.1}

**SEN. JERRY O'NEIL** asked if the indigent defense costs were raised significantly about the time of state assumption.

**Mr. Morris** said the reimbursement program funded all of those variable costs for jury witness fees, psychological evaluations, public defenders, etc. through 2001. The numbers for 2002 are just in and the request for reimbursement exceeded the actual reimbursements by \$1 million. They were \$1 million short on actual requests and this was mostly attributed to the *Bar-Jonah* court case. In 2003, they are reimbursing 65 percent and after everyone is reimbursed, any extra money will be reallocated to the counties. This is not in statute and he recommends it because of large cases, costs, etc. The 65 percent is a management tool; it makes sure everyone gets a fair share.

**SEN. O'NEIL** asked if indigent defense costs went up significantly when the state took assumption.

**Mr. Morris** advised between the 2001 and 2002 report, it went up by \$1 million and most of it is accountable to the *Bar-Jonah* case.

**SEN. O'NEIL** wondered about were paying 65 percent and the fund running out of money in the middle of the fiscal year.

**Mr. Morris** said under current law and in SB 134, the language could be expanded on page 5, line 19 and 20. He read those lines and said if the state cannot meet those expenses, then the county is responsible.

**Chief Justice Gray** said indigent defense costs went up i several different ways when state assumption became effective. Many smaller areas hire lawyers on a year contract or case by case basis, and when state assumption became effective, the hourly and



contract costs went up. In the bigger cities, where there are existing public defender offices, state assumption took on the entirety of the cost of those offices. Salaries, operating expenses, etc. have increased over a period of time.

{Tape: 2; Side: B, Counter 28.7}

**SEN. MCGEE** asked if it is appropriate to examine revenue sources that are going to counties to estimate what the actual costs are going to be for these counties.

**Mr. Swysgood** said some of the revenues would be difficult to calculate as counties levy the additional cost of license plates. The expenditures are the big side of the issue and they need to be identified. Personal services, district court operation, and indigent costs are also important. He said there was a \$3.5 million cost for indigent services in 2001 and in 2002 it is expected to rise by \$1 million making it \$4.5 million. The request is for \$8.2 million in 2004, which is double. When they did the budget they took care of the additional judges that were added and the 8 1/2 FTE's to set up the district courts, and they looked at the other costs associated with personal services, etc. The money that was in SB 176 had a figure of up to \$25 million and he assumed this is for variable costs. The actual cost was \$18.1 million and if there were additional costs that the counties incurred, why was the money not forwarded to counties to cover this cost. They took what the actual expenditures were and applied the growth rate and that is what they funded. The total was for district court operation plus the growth factor which added up to \$49 million for the biennium.

{Tape: 2; Side: B, Counter 44.3}

**ADJOURNMENT**

Adjournment: 5:55 P.M.

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SEN. JOHN ESP, Chairman

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PRUDENCE GILDROY, Secretary

JE/PG

**EXHIBIT (fcs14aad)**